IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6151 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KANBI PURABHAI NANJIBHAI

Versus

COLLECTOR OF BK

Appearance:

MS KUSUM M SHAH for Petitioners

MR VM PANCHOLI AGP for Respondent No. 1, 5

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 18/04/2000

ORAL JUDGEMENT

#. This Special Civil Application was admitted on 9/9/1988. Interim relief in terms of para 10(b) has also been granted which continues for all these years. More than 12 years has already been passed, the respondents

have not cared to file reply to the Special Civil Application.

#. Briefly stated facts of the case are that the petitioner No.1 is the father of the petitioner Nos. 2 and 3. The petitioner No.4 and respondent No.3 are sons of the respondent No.4. The land of Survey No.39, admeasuring 29 acres 7 Gunthas situated at village Dhakha Taluka Dhanera was Padtar Government land. The said land was granted on new and impartible tenure to the petitioner No.1 and Kanbi Haja Ramshi jointly on payment of occupancy price of Rs.496-4-0 under the order of Prant Officer dated 23/11/1954. Haja Ramshi, husband of the respondent No.4 and father of the petitioner No.4 and respondent No.3 died before agreement in Form I was executed in name of petitioner No.1 and respondent No.4 as guardian of her minor sons, petitioner No.4 and respondent No.3. This was executed on 19/7/57. An entry No.427 to this effect was posted in Hak Patrak VF No.VI on 20/6/57, which was duly verified on the same day by Circle Inspector and certified by Mamlatdar on 5/12/1957. It is the case of the petitioner, which is not controverted by the respondent No.1, 2 and 5 that the land granted was uneven having pits and ditches. The petitioners laboured hard and spent huge money in levelling land and filling pits and ditches with alluvium earth making it cultivable. They jointly constructed a well and installed electric motor. Since the day of the grant of the land the grantees were jointly cultivating it. The petitioner Nos. 1 to 4 and respondent Nos. 3 and 4 in whose name Survey No.39 was granted being illiterate could not know of revision of the survey survey carried out in 1960 and the entry No.590 posted on 14/3/1965 in VF VI showing Survey No.39 in three parts as being survey Nos. as under :-

S.No.	Area
39/1	12.09
39/2	15.6
39/3	1.32

#. A notice dated 9/9/85 was given to the petitioners by the concerned revenue officer stating therein though survey No.39 was granted to the petitioner No.1 and Haja Ramshi on new and impartible tenure yet without previous permission from the competent authority it was divided in three parts and transferred. This act of the petitioners was stated to be a breach of condition of the grant. The petitioners were called upon to show cause as to why this survey number should not be forfeited to the State

Government for the breach of condition of grant. The respondent Nos. 3 and 4 were not given any notice by the officer concerned. The respondent No.2 relying on the entry No.590 dated 14/3/65, entry No.772 dated 1/5/73 and entry No.813 dated 13/3/74 vide its order dated 17/10/85 held that without permission the partition of the land was effected by the petitioners, which resulted in breach of condition of the grant and ordered for forfeiture of the land to the State Government.

#. The petitioners, against the order of the respondent No.2 dated 17/10/1985 filed appeal to the Collector, Banaskantha being Land Appeal No.82 of 1986. That appeal was came to be rejected by the Collector, Banaskantha under its order dated 8/12/1986. The matter was taken up by the petitioners before the State Government in the revision but that too has been dismissed by the State Government under the order which was received by the petitioners by Registered post A.D. on 28/6/88. Hence this Special Civil Application.

#. Ms.Kusum Shah, learned counsel for the petitioner vehemently contended that the revenue officers have acted highly arbitrarily and in total disregard of justice oriented approach. It has next been contended that the revenue officers i.e. original authority, the appellate authority and the revisional authority have taken a highly technical view in this matter. In her submission, the substance of a matter has not been considered. She urges that it is not the case of any partition in strictly legal terminology. What in her submission, in the Hindu societies it is not unknown that father and son start living separately having their separate residence and kitchens under same roof. Here there was a joint grant in favour of Kanbi Purabhai Nanjibhai and Kanbi Haja Ramshi and land in question continued in the possession of the petitioner No.1, who is son and legal successor of Kanbi Haja Ramshi for their convenience as well as to avoid any dispute in the family. They are cultivating the land may be by dividing the portion thereof but it is not a partition of the nature as what it is contemplated in the Act. It has next been contended that all three authorities have lost sight of the fact that it is not a division and the transfer of the land. The relationship in between the petitioner No.1, 2 and 3 as well as of the petitioner No.4 and respondent Nos. 3 and 4 with Haja Ramshi is not in dispute. The act is of the year 1948 and Ms.Kusum Shah, learned counsel for the petitioner contended that it has to be read, understood and applied so that the reality of the things may be accepted and the act and provisions

should not be applied having a technical view and approach. Lastly it is contended that this action is taken after more than 12 years and only on the ground of delay in taking action the matter should have been decided in favour of the petitioners. Concluding her submission Ms. Kusum Shah, learned counsel for the petitioners urged that the notice has not been given to the respondent Nos. 3 and 4.

#. Mr.Pancholi, AGP., learned counsel for the respondents State of Gujarat and its officers submitted that it is a clear case of the breach of condition of the grant of the land. The land in dispute was granted with a specific condition of new and impartible tenure and it could not have been partitioned and transferred without prior permission of the competent authority. In his submission this land has been divided disproportionately. However, on the factual aspect Shri Pancholi does not dispute that Kanabi Hengola Purabhi is the son of petitioner No.1, Bhavabhai Hajabhai is son of Haja Ramshi. So far as the delay in initiating proceedings, Shri Pancholi submitted that it is a case of the breach of the term of the grant and delay itself may not be taken to be a ground for setting aside these orders. However, the learned counsel for the respondent - State of Gujarat and its officers have failed to furnish any explanation for this inordinate delay in initiating of the proceedings for forfeiture of the land for alleged breach of terms of grant.

#. I have given my thoughtful consideration to the submissions made by learned counsel for the parties.

#. From the document at Annexure-A, I find that in village form No.VI-Register of Rights (Hakk Patrak) one entry No.427 of 20.6.57 is there. The land has been entered in the name of Kanbipura Nanji and sons of Haja Ramsi under the guardianship of their mother Javubai. This entry was duly certified by the Mamlatdar on 5/12/57. It is not in dispute that this land has been granted to these persons under new and impartible tenure. Vide entry No.590 in village form No.VI-Register of Rights (Hakk Patrak) on 15/3/1965 which was duly approved by Mamlatdar concerned dated 24.12.65 entry of revision of survey has been made. It has been done by making of new survey of the village under the revision of survey on the basis of Khetvar Patrak. Accordingly changes made in the survey and areas are entered. From the entry No.813 dtd. 14.6.74 in village form No.VI the shares of sharers therein had been mutated and this survey No. was stated to be survey Nos.39/1, 39/2 and 39/3 respectively. From

this entry, I find that the land in the share of Kanbi Purabhai Nanjibhai and successors of the Ramshi was stated to be in actual possession of his son Kanbi Hengola Purabhai. As per entry No.590 the area of survey No.39/1 was 12 acres 9 Gunthas, area of survey No. 39/2 was 15 acres 6 Gunthas and area of Survey No.39/3 was 1 acre 32 gunthas. If we go by the entry No.813, it is apparent that the son of the petitioner No.1 is in possession of land admeasuring 12.09 acres + 1.32 = 13.41. Whereas the successor of Kanbi Hajabhai Ramabhai are in possession of the land admeasuring 15 acres 6 gunthas. By these figures, I find that the successors of grantees are almost in possession of equal land. This aspect of the case has not been considered by both the authorities below. Truly speaking it is not a case of partition but it is a case where the co-grantees of the land for their convenience and peaceful enjoyment are cultivating the specified portion thereof. This is not an act which can be said to be a breach of any of the provisions of the Fragmentation Act or the Bombay Land Revenue Code or Tenancy Act. In the family by growing of children naturally for the peacefully, effective and uncontrovertial management and enjoyment of the land, some inter se arrangements are to be made. It is true that in the revenue record some entries have been made which gives out as if it is a partition but this has been done by the revenue authorities on the basis of what is found on the site in respect of areas of survey No.39. It is unfortunate that both the authorities have not considered this matter having justice oriented approach. Though actual division (partition) may not be there but for the convenience of the sharers some understanding has been arrived at and they continues to cultivate the parts of land accordingly. Here it is not a case where the land has been transferred to third person Kanbi Purabhai Nanjibhai is the original grantee and now his son is in possession of his share in the land to which I fail to see how any exception can be taken and that too to the extent to take such a harsh action against those persons and to order for the forfeiture of the land to the State Government. It is understandable where the land has been transferred to third person without permission or the partition is made for the deliberate purpose of selling of the land, but that is not the case here. The son of the first grantee and legal heir of the second grantee are in occupation of the land and they are cultivating. In these facts, it is incorrect to say that there is even technically some fragmentation of the land.

###. The survey Nos.39/3 and 39/1 are in possession and occupation of son of petitioner No.1. The first entry

has been made way back in the year 1965. The second entry has been made way back in the year 1974. The respondents have not initiated any action for 19 years with reference to entry No.590 and for 10 years with respect to entry No.813. No explanation whatsoever has been furnished or put forth by the respondents State of Gujarat and its officers for this inordinate delay in initiation of action in the matter against the petitioners and the respondent Nos. 3 and 4 for forfeiture of land to the State Government. It is true that in all such cases, the delay may not be ground to drop the proceedings initiated by the respondents under the Land Revenue Code or the Tenancy Act or Fragmentation Act but each case has to be decided on the basis of its own facts. Under the Fragmentation Act, no proceedings have been taken against the petitioners so far. So far as the proceedings taken under the Tenancy Act, in this case these proceedings deserve to be set aside only on the ground of inordinate delay in initiating thereof as whatever is done it has been done by the original grantee and successful of second grantee of the land and they are in occupation thereof. In the family amongst the family members or in case of co-sharers of the land for their convenience these are the arrangements, which are not unknown to our agricultural civilization. Reality of the things are to be accepted and no technical view to be taken as a result of which the bona fide agriculturists are to be deprived of the land. Otherwise also, whatever the breach has been made of the condition of grant of the land by the petitioners and respondent Nos. 3 and 4 it is a breach which is curable. This partition and transfer both are permissible as what the respondents authorities also accepted with the permission for the competent authority. Similar is the case of fragmentation and if we go by all these provisions of law, I fail to see any justification in the action of the respondent-authorities to take such a harsh action rather than to find out the way to rectify this alleged breach of condition of the grant of the land. It is being a curable breach instead of initiating these proceedings, the authority concerned should have rectified the same and if any fees is to be paid it could have been charged from these persons. The approach of the competent authority should have to see that real agriculturists continues the agricultural operations keeping the land with them rather to proceed in such an arbitrary manner to dispossess them from the agricultural land. Though at one point of time I thought of to send this matter back to the competent authority to consider the same for rectification of this so-called alleged breach of the condition of grant. But in the facts of this case and

having the justice oriented approach and I find sufficient merits in the case in favour of the petitioner and respondent Nos 3 and 4 on equities this course is not adopted However, it is still open to the competent authority to find out if any amount is to be paid by the petitioner and respondent Nos 3 and 4 for rectification of this alleged breach of the condition of grant and this amount may be recovered from them. First they have to determine whether any amount payable by the petitioners and respondent Nos. 3 and 4 after giving them a notice and opportunity of hearing.

##. However, in such matters the order of the authorities below who proceed in highly technical manner, if allowed to stand it will give premium to their inaction, omission and will cause injustice to the real and bona fide agriculturists.

In the result, this Special Civil Application succeeds and the same is allowed and the orders of the Special Secretary (Appeal), Revenue Department dated 28.5.88 and the Collector, Banaskantha dated 8.12.1986 are quashed and set aside. Rule is made absolute. No order as to costs.

(S.K.Keshote, J.)
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